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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

The Telephone Consumer Protection
Act of 1991

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CC Docket No. 92-90

COMMENTS OF CITICORP

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MAY 26 1992

Federal Communications Commission
Office of the Secretary

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TABLE OF CONTENTS

	<u>Page</u>
SUMMARY.....	i
I. INTRODUCTION.....	1
II. THE COMMISSION'S PROHIBITIONS ON AUTODIALED CALLS TO SPECIFIC NUMBERS SHOULD NOT APPLY IN THE CASE OF NUMBERS THAT HAVE BEEN PROVIDED BY THE CALLED PARTY.....	3
III. THE COMMISSION SHOULD CLARIFY THAT ITS RULES, AND THE TCPA, DO NOT APPLY TO THE USE OF AUTODIALERS FACILITATING THE DELIVERY OF LIVE CALLS.....	6
IV. THE COMMISSION HAS IDENTIFIED "COMMONSENSE" EXCEPTIONS TO ITS PROHIBITIONS ON USE OF AUTODIALERS AND ON PRERECORDED OR ARTIFICIAL TELEPHONE SOLICITATIONS, BUT NEEDS TO CLARIFY THE EXCEPTION FOR CALLS TO FORMER OR EXISTING CLIENTELE.....	8
a. Autodialed Debt Collections Calls Should be Excepted from the Act's Prohibitions on Autodialed Calls.....	9
b. Artificial or Prerecorded Autodialed Calls and Telephone Solicitations to Prior or Current Business Relationships Should be Excepted from the Act's Prohibitions.....	11
V. THE COMMISSION SHOULD CLARIFY WHEN AUTODIALED CALLS WITH PRERECORDED OR ARTIFICIAL VOICE MESSAGES ENJOY THE "PRIOR EXPRESS CONSENT" OF THE CALLED PARTY.....	17
VI. THE COMMISSION HAS APPROPRIATELY ALLOWED CALLING PARTIES AUTHORIZED TO USE AUTODIALERS DELIVERING ARTIFICIAL OR PRERECORDED MESSAGES FOR SOLICITATION OR OTHER COMMUNICATIONS TO USE THIRD PARTY CONTRACTORS, AGENTS AND AFFILIATES.....	19
VII. PREDICTIVE DIALERS WHICH DELIVER NO MESSAGES OR ONLY PRERECORDED OR ARTIFICIAL MESSAGES ASKING THE CALLED PARTY TO AWAIT A LIVE COMMUNICATIONS, AND AUTODIALERS WHICH DO NOT DIAL RANDOMLY OR SERIALY ARE ENTITLED TO SPECIAL TREATMENT UNDER THE TCPA.....	20

TABLE OF CONTENTS (Continued)

	<u>Page</u>
VIII. THE COMMISSION SHOULD ADOPT THE "COMPANY-SPECIFIC DO-NOT-CALL LIST" APPROACH FOR RESTRICTING TELEPHONE SOLICITATIONS.....	23
a. The Company-Specific Do-Not-Call List Approach is the Most Sensible Alternative.....	23
b. The National/regional Do-Not-Call List Should Be Rejected.....	28
c. Network Technologies for Screening Out Telemarketing Calls, and Special Directory Markings Denoting Do-Not-Call Requests, are Unacceptable Alternatives to Company-Specific Do-Not-Call Lists.....	31
d. Reasonable Time-of-Day Restrictions, Coupled with Company-Specific Do-Not-Call Lists, Should Suffice to Bring About the Goals of the TCPA.....	34
IX. CONCLUSION.....	35

SUMMARY

Citicorp supports the Commission's efforts in this proceeding to ensure that the public obtains the benefits of modern autodialer and voice messaging technology while also establishing reasonable proposed rules limiting unrestrained telephone solicitation. The Commission's proposal should be clarified in several critical respects in order to fulfill the requirements of the TCPA.

The proposed rules should specify that autodialed calls to numbers associated with emergency, medical and specialized mobile radio services are made with the "prior express consent" of the called party, and therefore are permissible, when the number called has been represented as suitable for calling by the called party. This occurs, for example, when a doctor gives his or her car phone or emergency number when applying for a credit card. In such circumstances, the doctor's "prior express consent" to call those numbers with modern dialing and messaging equipment should be deemed to have been given. Similarly, autodialed calls to numbers given to the caller, and where the called party has consented orally, in writing, or by some other recorded mechanism to the receipt of calls, should be treated as calls made with the prior express consent of the called party.

The Commission should clarify that Section 64.1100(a)(2) of

its proposed rules, authorizing calls to residential telephone lines if certain exceptions are met, applies only in the case of autodialers delivering an artificial or prerecorded communication or solicitation. In other words, the Commission should recognize the TCPA permits the use of autodialers to deliver live debt collection calls, live telephone solicitations, or live customer service and telemarketing calls generally. This latter class of live message calls are not the "automated or prerecorded telephone calls to the home" which are properly the subject of the TCPA; they should, therefore, fall outside the restraints of Section 64.1100(a)(2). Similarly, autodialers which deliver only prerecorded or artificial messages asking the called party to await a live communication or solicitation should be treated, at the minimum, as making "commercial calls" without unsolicited advertisement. These calls, therefore, would and should be excepted from Section 64.1100(a)(2).

As counseled by the Congress, the Commission has carved out in Section 64.1100(c) "commonsense" exceptions to the TCPA's prohibitions on use of autodialers with artificial or prerecorded communications or solicitations. The exception for autodialed, automated debt collection calls is an appropriate reflection of strong Congressional intent. The Commission, however, should clarify that its exception for "established business relationships" covers not only current, ongoing relationships but also prior relationships including nascent ones based on consumer

inquiries and applications, as well as terminated relationships so long as the calls are made within a year of the termination. This important clarification is consistent with Congress' desire to allow the use of modern dialing and voice messaging technology in conducting normal, expected and desired communications between businesses and consumers.

Entities acting on behalf of parties permitted by the Commission's proposed rules to make autodialed calls with prerecorded or artificial communications or solicitations should stand in the shoes of these parties when it comes to the exceptions and obligations set out in the TCPA. Failure to extend the exceptions (as well as the obligations) to third party telemarketing contractors and agents, and entities calling on behalf of affiliates, could cripple the telemarketing industry to the detriment of not only that industry but others dependent upon it.

Of all the alternatives set out by the Commission in its commendable exploration of acceptable regulatory scenarios for limiting unwanted telephone solicitations, Citicorp supports the "company-specific do-not-call list" approach. The approach, coupled with reasonable time-of-day restrictions, would furnish the optimal process for safeguarding telephone subscriber privacy interests while giving consumers the power to decide which telephone solicitations they want. Moreover, the company-

specific approach is more cost-efficient, more practical, more realistic and workable, and more respectful of traditional customer-business relationships, than the national do-not-call list approach. The Commission should reject the other alternatives put forward in its Notice.

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COMMENTS OF CITICORP

I. INTRODUCTION.

Citicorp submits these comments on the proposals included in the Commission's April 17 Notice of Proposed Rulemaking ("NPRM") in this proceeding implementing the Telephone Consumer Protection Act of 1991 ("TCPA").¹ Citicorp supports the Commission's efforts to develop sensible policies and rules dealing with the use of automatic dialers ("autodialers") and autodialers delivering prerecorded and artificial communications and solicitations.

Citicorp, a U.S. bank holding company, is the sole shareholder of Citibank, N.A., its major subsidiary. With its subsidiaries and affiliates, Citicorp is a global financial

¹ The TCPA amends Title II of the Communications Act of 1934, 47 U.S.C. Sections 201 et seq., by adding a new section, 47 U.S.C. Section 227.

services organization serving individuals, businesses, governments and financial institutions in over 3300 locations throughout the United States and 92 countries.

The Commission has developed a well-balanced set of proposed rules which, like the TCPA itself, seek to "improve communications between individuals using the modern telecommunications technologies while at the same time targeting that abusive robotic use of the technology which has become such an intrusive part of the American society."² The Commission's proposed rules would encourage reasoned and reasonable use of modern autodialer and voice messaging technology while guarding against intrusive exploitation of that technology. In so doing, the Commission may well be helping industry help itself, by setting out guidelines and rules that will curb the excesses of the few unrestricted telemarketers that have come to portray and distort public perception of the reasonable and appropriate practices of the many business users of autodialers and automated telephone solicitation technology. The Commission's proposed rules achieve this with the least possible costs to the economy and within the restraints cautioned by the Administration in its recent moratorium on unnecessary regulation.

Citicorp offers these comments to assist the Commission in

² 137 Cong. Rec. H11312 (daily ed. Nov. 26, 1991) (statement of Rep. Markey).

its effort to come up with workable rules and to respond to questions raised by the Commission in its April 17 notice. Indeed, Citicorp has a stake in these proceedings as do its customers who are served by automated dialing and messaging technology. Citicorp's credit card operations alone spend over \$5 million each year on autodialer and voice messaging technology and associated costs. When it comes to debt collection associated with its credit card business, the estimated return on investment in automated dialling technology is 5:1, that is \$5 of recovery for every \$1 of technology and associated costs used in the debt collection effort. Citicorp therefore estimates that its use of autodialling technology in credit card debt collection alone helps generate over \$26 million per annum in revenue. Without reasonable Commission rules in this area, Citicorp's ability to capture these earned revenues would be jeopardized.

II. THE COMMISSION'S PROHIBITIONS ON AUTODIALED CALLS TO SPECIFIC NUMBERS SHOULD NOT APPLY IN THE CASE OF NUMBERS THAT HAVE BEEN PROVIDED BY THE CALLED PARTY.

The NPRM would implement Section 227(b)(1)(A) of the TCPA by prohibiting calls using autodialers to certain numbers unless the calling party has the "prior express consent" of the called party or the call is made for emergency purposes. This prohibition exists whether or not the autodialer that places the proscribed call also delivers artificial or prerecorded voice messages. The prohibited pool of calls are those to (1) emergency telephone lines; (2) telephone lines in a guest room or patient room of a

hospital, health care facility, elderly home or similar establishment; (3) a paging service or other specialized mobile radio service; or, (4) any service for which the called party is charged for the call.³

The Commission should clarify these rules so that an autodialed call to the above four destinations is deemed to be made with the called party's consent, and is therefore permissible, if the number called is one that has been provided by the called party to the caller (or to the party on whose behalf the call is made). So, for example, if a doctor gives his or her emergency number or car phone number to a credit card issuer when filling out a credit card application, then an autodialed call to that number would be deemed made with the doctor's consent.

Phone numbers typically are given by a party in an application for a service, during a product/service inquiry, or otherwise during the course of a normal business relationship between parties. This is done for the purpose of enabling one party to call the other. In a very real sense, when a customer or potential customer provides a number to a business or other party, that party is indicating that telecommunications is a permissible form of communication between the parties and that the party expects to be called at the number given. This is a

³ NPRM at para. 8; App. B at Section 64.1100 (a)(1).

form of "prior express consent" which invites or permits a call to the number given.

When a called party has provided a phone number to call in the manner described above, this should be seen as prior express consent for the calling party to use modern technology in making the expected phone call. To find otherwise, to require a calling party to obtain the specific consent of a caller to use specified dialing and messaging technology, would burden customer applications with a maelstrom of questions or check-off procedures seeking to determine customer technology preferences. This absurd, over-reaching result is certainly not compelled or even suggested anywhere in the TCPA or its legislative history. Indeed, such a result would run counter to the mandate to reduce unnecessary regulation and overall regulatory compliance costs.

There are other reasons, both practical and legislative in nature, for accepting a reasonably practical construction of the concept of "prior express consent." Without any other information from the party who has provided the called number, it is impossible for a caller to determine whether a given number is associated with a proscribed destination. Recognizing the dilemma facing callers, the House Committee on Energy and Commerce in its favorable Report on H.R. 1304, the Telephone Advertising Consumers Rights Act, stated

The restrictions on calls to emergency lines, hospital

rooms, patient rooms in nursing homes, cellular lines, etc., as set forth in Sections 227(b)(1)(A)(i-iii) [as added by H.R. 1304] does not apply when the called party has provided the telephone number of such a line to the caller for the caller's use in normal business communications."⁴

This language underscores Congressional understanding that the concept of "prior express consent" (also referred to as "prior express invitation or permission") is to be reasonably and practically construed and, accordingly, such consent should be deemed to exist in the case when a party reaches a called party at the number given by the called party.

III. THE COMMISSION SHOULD CLARIFY THAT ITS RULES, AND THE TCPA, DO NOT APPLY TO THE USE OF AUTODIALERS FACILITATING THE DELIVERY OF LIVE CALLS.

At certain points in the NPRM and its proposed rules, the Commission appears to conclude that autodialed calls always carry prerecorded or artificial voice messages.⁵ This may not always be the case. For example, many autodialers will initiate the delivery of precoded or artificial voice messages only when a

⁴ H. Rpt. 102-317 13 (emphasis supplied). The TCPA, which passed the House and Senate on November 26 and 27 respectively, incorporates the Telephone Advertising Consumer Rights Act, H.R. 1304, which passed the House on November 18, 1991 and the principal provisions of S. 1462 and S. 1410 which passed the Senate on November 7. The respective House and Senate bills making up the TCPA were virtually identical in their provisions dealing with proscribed calls to the destinations noted above in the text, and throughout generally. The House legislative history, and particularly the referenced House Committee Report, provide useful contemporaneous Congressional interpretation of the TCPA.

⁵ See, e.g., NPRM at para. 23.

live customer service representative is unable to come onto the line at the moment a connection is established with the called party. Some autodialers, called "power dialers," simply permit the high-speed dialling of pre-programmed numbers.

The Commission should make it clear that Section 64.1100 (a)(2) of its proposed rules is premised on the Commission's recognition that the TCPA does not apply to and therefore does not restrict the use of automated telephone dialing systems unless these systems are used to deliver an artificial or recorded voice to deliver a message. This action would recognize and permit the use of autodialers to deliver live debt collection calls, live telephone solicitations, or live customer service and telemarketing calls generally. These calls -- which employ autodialling technology without voice messages -- are not covered by the Act because they are not the "automated or prerecorded telephone calls to the home" which are properly the subject of the Act.⁶

If, however, the TCPA is somehow read to apply to and therefore restrict the use of autodialers delivering strictly a

⁶ See TCPA, Section 2, Findings 12 and 13. See also, e.g., 137 Cong. Rec. H11312 (daily ed. Nov. 26, 1991) (statement of Rep. Cooper) and H. Rpt.102-317, supra note 4, at 2, 6 ("Automated dialing systems" covered by the Act are defined parenthetically as "automatic telephone dialers coupled with recorded message players").

live operator call,⁷ then proposed Section 64.1100(a)(2) of the Commission's proposed rules would need to be revised. This section now triggers the exceptions set out in Section 64.1100(c) only in the case of autodialers using an artificial or prerecorded voice to deliver messages. Unless revised, this section would fail, by its very terms, to extend the exceptions to autodialers delivering live communications. This unfortunate and unintended result would be highly damaging and disruptive. In the case where the TCPA is somehow read to apply to autodialers delivering live calls, the Commission would need to expand the grant of authority carved out in Section 64.1100 (a)(2) and (c) to apply it those autodialers that deliver live operator calls.

IV. THE COMMISSION HAS IDENTIFIED "COMMONSENSE" EXCEPTIONS TO ITS PROHIBITIONS ON USE OF AUTODIALERS AND ON PRERECORDED OR ARTIFICIAL TELEPHONE SOLICITATIONS, BUT NEEDS TO CLARIFY THE EXCEPTION FOR CALLS TO FORMER OR EXISTING CLIENTELE.

The Commission rightfully recalls the TCPA's caution that "individuals' privacy rights, public safety interests, and commercial freedoms of speech and trade must be balanced in a way that protects the privacy of individuals and permits legitimate

⁷ The Commission does appear to reverse itself and state that "Autodialer calls [with or without artificial or recorded communications] are prohibited to: residential telephone lines without the consent of the called party" NPRM at para. 8. This conflicts with the TCPA's prohibition in this context which applies only to autodialed calls which use "an artificial or prerecorded voice to deliver a message" TCPA, 47 U.S.C. Section 227(b)(1)(B).

telemarketing practices."⁸ Accordingly, the Commission's proposed rule establishes certain exceptions to its prohibitions on use of autodialers delivering artificial or prerecorded voice communications and solicitations. These are "commonsense exceptions" of the kind contemplated and encouraged by the TCPA because they ensure that normal, expected and desired autodialed communications between telemarketers, businesses and called parties can continue to occur.⁹

a. Autodialed Debt Collection Calls Should be Excepted from the Act's Prohibitions on Autodialed Calls.

The Commission has proposed an exception from the TCPA's prohibitions for the use of autodialers for artificial or prerecorded debt collection calls made by or on behalf of a caller, so long as the call meets certain technical, procedural requirements proposed elsewhere in the Commission's rules.¹⁰ Examples of such calls would include autodialed calls leaving messages requesting the answering party to hold for a message or representative from the lending institution involved, or leaving messages asking the called party to respond to the call or to

⁸ NPRM at para. 9, citing TCPA, Finding 9.

⁹ 137 Cong. Rec. H11312 (daily ed. Nov. 26, 1991) (statement of Rep. Markey).

¹⁰ The Commission excludes debt collection calls from the definition of "telephone solicitations" covered by the Act. This accurately reflects the express language and legislative history of the TCPA since, among other things, such calls do not "encourage the purchase, rental of, or investment in property, goods, or services." See generally 47 U.S.C. Section 227(a)(3) and 137 Cong. Rec. H11310 (daily ed. Nov. 26, 1991) (statement of Rep. Markey).

some other prior communication.

Congress invited the Commission to consider a number of rationales in excepting debt collection calls from the TCPA. The Commission need not take up one invitation to determine if such calls are "commercial calls" under the Act¹¹ because, as the Commission rightfully concludes, debt collection calls qualify for exception under the TCPA on other grounds easier to establish. Such calls, for example, do not adversely affect those debtor privacy rights which are protected by the TCPA. Nor, as the Commission has founded, do these calls include the conveyance of any unsolicited advertisement as contemplated under the Act. Moreover, such calls clearly fall within the TCPA's exception for autodialed calls to those with whom the caller, or a party acting on the caller's behalf, has an established business relationship; in the case of the debtor, the relationship began with the transaction creating the debt in the first place (if not earlier) and continues for as long as the debt which is the subject of the call is unpaid. Finally, the legislative history of the TCPA is filled with numerous views from Members of the House and Senate who introduced and sponsored legislation culminating in the TCPA urging the Commission to consider treating artificial or prerecorded debt collection calls

¹¹ See 137 Cong. Rec. S18784 (daily ed. Nov. 27, 1991) (statement of Sen. Hollings inviting the Commission to determine by rule whether prerecorded debt collection calls should be considered non-commercial under the TCPA).

as candidates for exemption from the Act's prohibitions.¹²

b. Artificial or Prerecorded Autodialed Calls and Telephone Solicitations to Prior or Current Business Relationships Should be Excepted from the Act's Prohibitions.

Section 64.1100(c)(3) of the Commission's proposed rules create an exception to the prohibition against residential calls or messages using artificial or prerecorded voice technology where the called party has a prior or current business relationship with the calling party at the time the call is made.¹³ Citicorp supports this exception. The Commission, however, should clarify when a prior or current business relationship will be deemed to exist for purposes of the TCPA. The Commission's interpretation of the exception for "established business relationships" should accommodate a range of prior as well as existing relationships.

An "established business relationship" for purposes of the TCPA should cover not only current, ongoing relationships involving the purchase and provision of property, goods and services, but also prior business relationships. An "established

¹² See, e.g., H. Rpt. 102-317, supra note 4, at 16, 17; 137 Cong. Rec. H11311, H11312 (daily ed. Nov. 26, 1991) (statements of Rep. Markey and Rep. Lent); 137 Cong. Rec. S. 18784 (daily ed. Nov. 27, 1991) (statement of Sen. Hollings). This expression of views is enough to support the Commission should it seek to expand the list of exceptions set out in Section 64.1100(a)(4)(c) of its proposed rules by adding an exception for debt and bill collection calls.

¹³ NPRM at para. 14.

business relationship" also should embrace those relationships where voluntary communication but not consideration has passed between the two parties involved.¹⁴ Such an interpretation correctly reflects Congressional intent that the TCPA's prohibitions not be permitted to interrupt normal, expected and desired communications between businesses and consumers. For example, the House Energy and Commerce Committee, in its report on H.R. 1304,¹⁵ expressly stated that "an established business relationship" could be based upon "any prior [that is, "prior" to the time of the autodialed call] transaction, negotiation, or inquiry between the called party and the business entity that has occurred during a reasonable period of time."¹⁶

The Committee Report goes on to note that it did not seek to "foreclose the capacity of businesses to place calls that build upon, follow up, or renew, within a reasonable period of time, what had once been [an] 'existing client relationship.'"

"For example, [a] magazine publisher would be able to call someone who has let their subscription lapse. A person who recently bought a piece of merchandise may

¹⁴ The NPRM tentatively rejects "any interpretation of the term 'business relationship' which would be based solely on a prior solicitation from the caller to a prospective customer." NPRM at para. 14. Citicorp agrees that a solicitation from a business to a potential customer, without more, does not rise to the level of an "established" business relationship contemplated by the Congress in the TCPA.

¹⁵ See supra note 4.

¹⁶ H. Rpt. 102-317 at 14.

receive a call from the retailer regarding special offers or information on related lines of merchandise. A loan officer or financial consultant may call a telephone subscriber who had requested a loan or bought auto insurance a couple of months ago to pitch new loan offerings or other types of insurance."¹⁷

The Commission, as it has proposed, should include in the text of an order adopting any final rules implementing TCPA, or in the text of the rules themselves, explicit language which allows a calling party, or an entity acting on its behalf, to make autodialed calls carrying prerecorded or artificial voice messages for solicitation or other purposes to those with whom the calling party has a "prior or current business relationship." The Commission should explicitly recognize that the following relationships fall within the ambit of a "prior or current business relationship":

- (1) where the calling business and the called individual have an established business relationship characterized by ongoing transactions or negotiations;

¹⁷ Id. at 14-15. The Committee intended "established business relationship" to include relationships where a called party has submitted a prior application to the calling party for goods and services or otherwise made a prior inquiry to the calling party regarding goods and services. The Committee did not intend for the notion of "established business relationship" to cut short artificially the range or subject matter of telemarketing to a calling party's clientele. For example, the Committee viewed that parties may place autodialed calls with artificial or prerecorded voice to their existing clientele in order to notify them of additional or new products and services. Id. at 13, 14, 15. See also 137 Cong. Rec. S18785 (daily ed. Nov. 27, 1991) (statement of Sen. Pressler) ("For example, if Citibank's credit card operation needed to inform customers about new services it intended to provide their credit card customer, clearly this contact will be allowed.")

- (2) where the called individual has conducted a business transaction or negotiation with the calling business within the past year;
- (3) where the calling business and the called individual had a business relationship terminated no longer than one year prior to the time the call is made (unless a debt collection is involved);
- (4) where the called individual has submitted or made an application or inquiry to the calling business regarding its products and services.¹⁸

Such a construction of the "established business relationship" exception for autodialed calls with prerecorded or artificial voice messages, and also for "telephone solicitations" pursuant to Section 227(c)(3) of the TCPA, is consistent with the intent of the TCPA. The Act sought to foreclose robotic and unsolicited telephonic intrusions into the home. The Congress, as noted above, did not intend to disrupt normal, expected or desired autodialed and automated messages from a business to a customer with whom the business has had or does have a business relationship. The Congress did not seek to throw businesses back to the Stone Age when it comes to modern dialling and voice messaging technology.¹⁹ While the outright banning of such normal calls using available technology may be desirable in the

¹⁸ This definition should apply as well when it comes to the established business relationship exemption for "telephone solicitations," as set forth in the TCPA, 47 U.S.C. Section 227 (a)(3).

¹⁹ "... the aim of this legislation is not to eliminate the brave new world of telemarketing, but rather to secure an individual's right to privacy that might be unintentionally intruded upon by these new technologies." 137 Cong. Rec. H11310 (daily ed. Nov. 26, 1991) (statement of Rep. Markey).

view of some, that is not the intent nor the requirement of the TCPA. Moreover, it is Citicorp's experience that customers and consumers generally anticipate, and understand there are benefits from, the use of modern telephone technology in customer service and telemarketing. These benefits include better and more responsive service and answers to inquiries, better awareness of available enhancements to existing products and services and also new offerings, and rapid and straightforward communications between the parties.

Customers and consumers, moreover, generally anticipate the use of modern technology when dealing with businesses. When an individual submits an application or an inquiry about goods or services, this indicates that a potential customer has a desire to obtain further information. When, as is typical, the individual includes a phone number during the application, inquiry or transaction process, this suggests to both the individual and the business that telephonic communication is recognized as an appropriate communications vehicle. They expect and desire to be called. Autodialed calls, with or without delivery of prerecorded or artificial voice messages, are a cost-efficient and reasonable means of providing information and customer service to those who have expressed an interest. As noted in Part I of these Comments, to require businesses to obtain specific consent from a customer or consumer to use autodialing equipment, voice messaging technology or other select

technology applications in calling that customer or consumer is neither required by the Act, nor sensible, nor consistent with regulation that is minimally burdensome or cost-effective.

Similarly, autodialed communications and prerecorded/artificial voice technology are modern, efficient, and cost-effective ways to establish personal contact with an individual who terminates a business relationship. It is Citicorp's experience that these individuals consider these follow-up calls natural occurrences, even a year later, and expect to hear about the special deals or incentives Citicorp will offer to regain that customer's business. As in the scenario when specific information has been previously requested by the called party, this type of call is not viewed as offensive or unexpected by prior clientele when Citicorp treats the called party as if it wants to have that party come back as a customer.

Citicorp believes that the Commission will achieve a rational and better balance between telephone subscriber privacy and usage of automated dialing and voice technology if it allows the use of autodialers and prerecorded and artificial voice messages in cases that fall beyond ongoing business relationships. The Commission would be acting appropriately and consistently with the intent of the framers of the TCPA if it were to permit the use of artificial or prerecorded calls in the case of prior business relationships, including nascent and

terminated relationships. The economic incentives motivating a calling party and inherent in an ongoing, incipient or recently terminated business relationship suggest that callers will honor the calling preferences of called parties, will call at reasonable hours, will use unobtrusive technology and tactics, and generally will practice cordiality and consideration. To suggest otherwise defies normal marketplace and customer retention incentives governing the business practices of conscientious, growth-seeking corporations.

V. THE COMMISSION SHOULD CLARIFY WHEN AUTODIALED CALLS WITH PRERECORDED OR ARTIFICIAL VOICE MESSAGES ENJOY THE "PRIOR EXPRESS CONSENT" OF THE CALLED PARTY.

The Commission's proposed rules establish that calling parties may place autodialed solicitation or other calls with prerecorded or artificial voice messages to those called parties who have given "prior express consent."²⁰ This exception exists independently of the Act's exceptions for prior or current business relationships, debt collection calls, non-commercial calls, and commercial calls carrying no unsolicited advertisement.

The Commission should carefully delineate the circumstances in which a calling party has the "prior express consent" of a called party. Such delineation should be precise and should not

²⁰ NPRM, Section 64.1100(a)(2).

entail onerous consent procedures. In Citicorp's view, rigorous or vaguely worded consent procedures would deny consumers the benefits and cost-savings of automated dialing and voice message technology.²¹ This is not what Congress intended with the TCPA.

In part, the Commission's selection of appropriate regulatory alternatives for telephone solicitation (e.g., "do-not-call" lists) will furnish telephone subscribers with one mechanism for articulating their respective "prior express consent." The Commission, however, should address other instances where the calling party has obtained the "prior express consent" of the called party. This will be useful in the case of autodialed calls falling under Section 64.1100(a)(1) and (a)(2) of the proposed rules and other situations addressed below.

Specifically, the Commission should recognize that a calling party has the "prior express consent" of a called party to use autodialers to deliver recorded solicitations or communications where

- (1) the called party has consented to the receipt of telephone calls, orally, in writing, or through some other recorded consent procedure, or
- (2) the call has been made to any number given by the called party to the caller including, but not limited to, situations where

(a) the party answering is not the party who

²¹ See also discussion at supra pages 4-5 and 15-16 (consumers expect callers to use modern telecommunications technology when they call).